APPENDIX D

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GREGORY DEAN CALIENDO, *Petitioner-Appellant,* v. WARDEN OF CALIFORNIA MEN'S COLONY, *Respondent-Appellee.*	No. 01-56946 D.C. No. CV-99-07263-R Central District of California, Los Angeles ORDER WITHDRAWING OPINION AND DENYING PETITION FOR REHEARING EN BANC

Filed April 5, 2004

Before: Cynthia Holcomb Hall, Diarmuid F. O'Scannlain, and M. Margaret McKeown, Circuit Judges.

ORDER

The opinion filed on January 9, 2004, is hereby withdrawn in its entirety and replaced with a new opinion.

The panel has voted to deny appellant's petition for panel rehearing. Judges O'Scannlain and McKeown have voted to deny the petition for rehearing en banc and Judge Hall has recommended denial. The full court has been advised of the

petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.-

The petition for panel rehearing and the petition for rehearing en banc are DENIED.